1. Because the relatrixes were immigrants and had not complied with the provisions of law made for their entry into the United States.

2. Because they did not have properly visaed passports and had no right as returning immigrants to come into the United States without visaed passports or visas, according to law and according to the rules and regulations of the Department of Labor of the United States.

3. Because the relatrixes were not in possession of valid quota consular immigration visas.

These assignments hardly seem sufficient to raise the point that the District Court erred in its finding as to what the evidence showed as to the nature of the relators' stay abroad. The respondent did, however, contend in the Circuit Court of Appeals that the visit was not a temporary one.

The Circuit Court of Appeals reversed the order of the District Court, holding that although under the law and facts the Secretary of Labor had discretion to admit the relators, they could not enter as a matter of right inasmuch as they had no return permits and no immigration visas. (R. 81–83.) In the course of its statement of the facts and in its opinion the court said (R. 79, 80, 81):

> * * * They both were domiciled in New York from 1909 and the evidence is perfectly plain and convincing to the effect that neither of them has abandoned her domicile but has at all times since it was ac-

quired intended to keep it and to make her permanent residence in this country.

* * * * *

* * * It is true that they had previously lawfully been admitted, had established their domicile here and were returning from a visit abroad. Their visit had been somewhat extended first by the sickness and death of Aspasia's husband, by the necessity for remaining to settle his estate, and then by the delay occasioned by their persistent, though fruitless, attempts to obtain return permits. * * * We think the relators have brought themselves well within the claimed status as immigrants once lawfully admitted who were returning from a temporary visit abroad. They always intended to come back as soon as they could. That depended upon the condition of health of Aspasia's husband and after he died upon the time required for them to remain to attend to the settlement of his estate. * * *

SUMMARY OF ARGUMENT

Even although we assume that the evidence introduced before the Immigration Board established that the relators are immigrants previously lawfully admitted to the United States who are returning from a temporary visit abroad, they are inadmissible because they had neither a return permit nor a nonquota visa.

Section 13(a) of the Immigration Act of 1924, which governs their case, provides, as a general

rule, that even such immigrants shall not be admitted unless they have visas. We contend that the only exceptions to this requirement are such classes of cases as may be prescribed by regulations in accordance with the provisions of Section 13(b). The regulations prescribe no exception which is applicable to the relators, and the Secretary was not required by statute to prescribe any exception applicable to any particular class of cases.

It was within the power of Congress to exclude immigrants previously lawfully admitted to the United States who are returning from a temporary visit abroad unless they present visas.

The courts have no jurisdiction to review the action of a Consul in refusing an immigrant a visa under any circumstances. Congress may provide that the decision as to the issuance of a visa be left entirely to consular agents, without being subject to judicial review, and the Immigration Act of 1924 did in effect so provide. The language of the Act, as well as practical considerations, indicates that Congress did not intend that the question of eligibility for visas could be litigated in the courts of the United States.

Even if there are exceptional cases in which the courts may disregard the absence of a visa, they may not do so where consular officers have acted deliberately and not arbitrarily. Neither of the courts below found that the consul did act arbitrarily. The record shows deliberate consideration

of the matter by a consular officer, and we submit that there is no basis for contending that he acted arbitrarily.

ARGUMENT

I

THE RELATORS WERE NOT ENTITLED TO ENTER THIS COUNTRY INASMUCH AS THEY HAD NO VISAS OR RETURN PERMITS

The relators admit that they had neither return permits nor immigration visas, but contend that as they had been previously lawfully admitted to the United States and were returning from a temporary visit abroad they should be admitted without presenting either form of document. We submit that as they had neither form of document, it was proper to exclude them. We assume that the evidence introduced before the Immigration Board showed that they were immigrants previously lawfully admitted to the United States returning from a temporary visit abroad.

The aliens left the United States in August, 1923, but they did not actually return to our border until 1930 and evidently they made no attempt to return to this country until after the passage of the Act of May 26, 1924. It is clear that their rights are governed by the provisions of that Act. (See Section 31, p. 38, *infra.*) This the relators do not dispute.

The question then is whether under that act the Secretary of Labor had authority to exclude the

relators upon the ground that they had no visas. Section 13 of the Act provides, in part:

> (a) No immigrant shall be admitted to the United States unless he (1) has an unexpired immigration visa or was born subsequent to the issuance of the immigration visa of the accompanying parent, (2) is of the nationality specified in the visa in the immigration visa, (3) is a nonquota immigrant[1] if specified in the visa in the immigration visa as such, and (4) is otherwise admissible under the immigration laws.
>
> (b) In such classes of cases and under such conditions as may be by regulations prescribed immigrants who have been legally admitted to the United States and who depart therefrom temporarily may be admitted to the United States without being required to obtain an immigration visa.

From this it appears that the enactment of Congress is that no immigrant shall be admitted to the United States unless he has an unexpired immigration visa, but that this requirement, in so far as it affects immigrants returning from temporary visits abroad, may be dispensed with in cases and under conditions prescribed by regulation. Unless, therefore, the relators can bring themselves within

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[1] Section 4 of the Act provides in part:

"When used in this Act the term 'nonquota immigrant' means—

* * * * *

"(b) An immigrant previously lawfully admitted to the United States, who is returning from a temporary visit abroad; * * *."

the conditions which have been prescribed by regulation for dispensing with an immigration visa, their admission is prohibited, not by regulation, but by the statute itself, because they have no immigration visas. The indispensable condition, now imposed by the regulations for dispensing with an immigration visa in case of immigrants returning from Greece, is the possession of unexpired permits to return. (See pp. 38–39, *infra.*)

The relators, of course, concede that these regulations contain no provisions dispensing with an immigration visa applicable to such a case as theirs, but assert that they "lawfully can not be excluded from reentry into the United States merely because the Secretary of Labor has made no regulations which conform with the provisions of law applicable to their cases." The answer is that the law does not require the Secretary to prescribe regulations covering any particular class of cases. The effect of Section 13 (a) is to require visas as a general rule, and paragraph (b) goes no further than to leave it to the Secretary to determine what exceptions to the rule he will make. He is to decide in what "classes of cases," and under what conditions the requirement of a visa is to be foregone.

The relators rely upon *Johnson* v. *Keating*, 17 F. (2d) 50, in which a majority of the Circuit Court of Appeals for the First Circuit (with Judge Johnson dissenting) held that an alien who proved that he was returning from a temporary visit abroad was entitled to be admitted without either

a visa or a permit. The court there said of the 1924 Act (p. 51):

> Taking the provisions as to permits and visas together, we think it clear that Congress intended them as convenient, but not essential, evidence for determining the real status of nonquota immigrants returning from a temporary absence.

This conclusion is evidently based largely upon the language of Section 10 (f), which provides:

> A permit issued under this section shall have no effect under the immigration laws, except to show that the alien to whom it is issued is returning from a temporary visit abroad; but nothing in this section shall be construed as making such permit the exclusive means of establishing that the alien is so returning.

The regulations do not make the permit the exclusive means of establishing that the alien is returning from a temporary visit abroad. Its possession, whatever its evidentiary effect may be under Section 10 (f), is made the condition for dispensing with the possession of an immigration visa required under Section 13 (a). That Section 10 (f) is not affected by the regulations is apparent, because it is clear from their terms that the relators would have been admissible if they had presented an unexpired immigration visa, and had established, by any satisfactory proof and without producing an unexpired permit, that they had been

previously lawfully admitted to the United States and were returning from a temporary visit abroad.

The provision quoted from Section 10 (f) deals with the evidentiary effect of the permit. It does not limit either the requirement of an immigration visa under Section 13 (a) or the authority to dispense with this requirement conferred by Section 13 (b). It is, we submit, clear that Congress did not intend to dispense with immigration visas even in the case of aliens returning from temporary visits abroad, except under such conditions as might be prescribed by regulation.

Johnson v. *Keating,* 17 F. (2d) 50, *supra,* is the only case outside of the Second Circuit which has decided the point here involved. That the decision and reasoning in that case are contrary to our contentions can not be denied. It should be pointed out, however, that after that case was decided and before the relators applied for admission, the regulations had been amended so as to eliminate the inconsistencies to which the court referred in that case.

II

IT WAS WITHIN THE POWER OF CONGRESS TO EXCLUDE ALIENS RETURNING TO THIS COUNTRY AFTER TEMPORARY VISITS ABROAD UNLESS THEY HAVE VISAS

The petition for certiorari states that one of the questions presented is (p. 2):

> Whether or not under the Constitution of the United States a lawfully domiciled alien has the right to occupy, depart from and

> return to his domicile without let or hindrance.

This question is not argued in the brief, and it seems clear from the decisions of this Court that Congress has power to exclude aliens, even those having a residence in this country, unless they present visas upon their return.

Thus, in *Lapina* v. *Williams*, 232 U. S. 78, the Court construed the Immigration Act of 1907 as permitting the deportation of a woman who had remained in this country for more than three years after first entry, had gone abroad for a temporary purpose, had returned and had practiced prostitution within three years of her reentry. In the course of its opinion the Court said (p. 88):

> The authority of Congress over the general subject matter is plenary; it may exclude aliens altogether, or prescribe the terms and conditions upon which they may come into or remain in this country.

See also *Mahler* v. *Eby*, 264 U. S. 32, 39; *Tiaco* v. *Forbes*, 228 U. S. 549, 556–557; *Low Wah Suey* v. *Backus*, 225 U. S. 460, 467, 468; *Keller* v. *United States*, 213 U. S. 138, 143–144; *The Japanese Immigrant Case*, 189 U. S. 86, 97.

III

THE COURTS HAVE NO JURISDICTION TO REVIEW THE ACTION OF A CONSUL IN REFUSING TO ISSUE AN IMMIGRANT A VISA UNDER ANY CIRCUMSTANCES

Although the relators do not argue that the courts may review the decision of a Consul refusing

to issue a visa, it seems desirable to discuss this matter.

It is within the power of Congress to provide that the question of the eligibility of an applicant for a visa shall be left ultimately to executive officers.

In *Lem Moon Sing* v. *United States,* 158 U. S. 538, the Court upheld a provision in the Appropriation Act of August 18, 1894 (c. 301, 28 Stat. 372, 390), which provided that, in certain cases

> the decision of the appropriate immigration or customs officers, if adverse to the admission of such alien, shall be final, unless reversed on appeal to the Secretary of the Treasury.

The Court affirmed the denial of the writ of *habeas corpus* applied for by a Chinese merchant who asserted that he had a permanent domicile in the United States, that he had left the country on a temporary visit to his native land with the intention of returning and continuing his residence here, and that the Act under which he was excluded was passed during his absence. The Court said (p. 547–548):

> * * * While he lawfully remains here he is entitled to the benefit of the guaranties of life, liberty, and property, secured by the Constitution to all persons, of whatever race, within the jurisdiction of the United States. His personal rights when he is in this country and such of his property as is here dur-

> ing his absence, are as fully protected by the supreme law of the land as if he were a native or naturalized citizen of the United States. But when he has voluntarily gone from the country, and is beyond its jurisdiction, being an alien, he cannot reenter the United States in violation of the will of the government as expressed in enactments of the law-making power. He cannot, by reason merely of his domicile in the United States for purposes of business, demand that his claim to reenter this country by virtue of some statute or treaty, shall be determined ultimately, if not in the first instance, by the courts of the United States, rather than exclusively and finally, in every instance, by executive officers charged by an act of Congress with the duty of executing the will of the political department of the government in respect of a matter wholly political in its character. He left the country subject to the exercise by Congress of every power it possessed under the Constitution.

See also *Fok Yung Yo* v. *United States,* 185 U. S. 296, 302; *Wong Wing* v. *United States,* 163 U. S. 228, 231; *Fong Yue Ting* v. *United States,* 149 U. S. 698, 713–714; *United States ex rel. Ulrich* v. *Kellogg,* 30 F. (2d) 984 (App. D. C.), certiorari denied *sub nom United States ex rel. Ulrich* v. *Stimson,* 279 U. S. 868.

It remains to consider what the Act of 1924 does provide.

We submit that by the Immigration Act of 1924 Congress left the decision as to the eligibility of an applicant for a visa to the consular officer and provided for no judicial review of his decisions.

Thus, Section 2 (pp. 32–33, *infra*) provides that

> (a) A consular officer upon the application of any immigrant * * * may * * * issue to such immigrant an immigration visa * * *.
>
> * * * * *
>
> (f) No immigration visa shall be issued to an immigrant if it appears to the consular officer, from statements in the application, or in the papers submitted therewith, that the immigrant is inadmissible to the United States under the immigration laws, nor shall such immigration visa be issued if the application fails to comply with the provisions of this Act, nor shall such immigration visa be issued if the consular officer knows or has reason to believe that the immigrant is inadmissible to the United States under the immigration laws.

Section 7(a) provides that every immigrant applying for an immigration visa shall make application therefor in duplicate in such form as shall be by regulations prescribed and specifies in detail the information which the application shall give.

Section 8 provides:

> A consular officer may, subject to the limitations provided in sections 2 and 9, issue an immigration visa to a nonquota immi-

grant as such upon satisfactory proof, under regulations prescribed under this Act, that the applicant is entitled to be regarded as a nonquota immigrant.

See also the instructions issued to Consuls, pp. 40–42, *infra*.

Nowhere in the Act is there any express provision for any review of the decision of the consular officer.

The language of the statute above referred to indicates that the granting of a visa to an immigrant is to be determined by the consular officer upon information submitted to him. The issuance of a visa is not a mere ministerial act. A decision on an application involves the exercise of the broadest judgment and the consideration of all available information. It requires a determination as to whether in fact the alien possesses the qualifications producing eligibility under the numerous statutes on the subject. It should be borne in mind that perhaps the most numerous class of cases in which consular officers consider the question of issuing visas are for quota immigrants. They are also given the power to issue visas on passports of aliens who are not immigrants but who seek to come to the United States.[2]

Hundreds of thousands of applications for visas, immigrant and nonimmigrant, are annually made

[2] See Act of May 22, 1918, c. 81, 40 Stat. 559; Act of March 2, 1921, c. 113, 41 Stat. 1217; Executive Order No. 4813, Immigration Laws and Rules of January 1, 1930, p. 100.

to our consular officers abroad. A large percentage of such applications are refused. It is inconceivable that Congress could have contemplated that every alien whose application for visa is denied should have a right in the courts of this country to review the decision of the officer. The consular officer is outside of the jurisdiction of the courts of the United States. The courts of the country in which he is situated would hardly assume to control his action. Such suits, if maintained at all, must be brought in the courts of the United States. If our courts are to review consular actions in such cases the records of the consular officials must be transported to the United States, and in many cases the consuls themselves must be required to attend here to justify their action. Under well-settled principles, and especially as there are no rights involved which are protected by our Constitution, the decision of the consular officers and of their superior, the Secretary of State, in matters of this kind should be considered final and conclusive.

There is no provision in any of the statutes applicable to this case which requires that any formal hearing be had by the consular officer, or provides that the applicant shall be entitled to summon witnesses or formally present evidence. It is contemplated that the applications for visas shall be decided in a summary way, without any formalities, without any hearing except the consideration of such documents as the applicant cares to present, and that in reaching a decision the con-

sular officers may avail themselves of any information on the subject however obtained. Much of the information they obtain respecting applicants for visas is derived from confidential sources, which would dry up if the United States should be compelled to disclose the evidence in court.

It is a desirable general policy that the eligibility of immigrants be determined to as great an extent as possible before the immigrants sail. If ineligible immigrants are permitted to come to this country, the hardships which will result from their exclusion after arrival at our ports will be quite intolerable. It was therefore fair to make possession of a visa issued by the consul before embarkation one of the prerequisites of entry. These considerations evidently led to the enactment of the provisions requiring visas. See Report of Committee on Immigration and Naturalization of the House of Representatives, 68th Cong., 1st Sess., Report No. 350, pp. 10–12.

Under all these conditions the conclusion must be that Congress did not intend that aliens abroad whose applications for passport visas or immigration visas have been denied may nevertheless come to this country and upon their exclusion litigate in our courts the propriety of the action of the Consul in refusing a visa.

Normally, the alien who is refused a visa would never come to the United States. He would have great difficulty in obtaining passage on any vessel because of Section 16 of the 1924 Act, which makes

it unlawful for any owner of a vessel to bring to the United States by water an immigrant who has not an unexpired immigration visa. Such an alien might, of course, attempt through a friend or attorney in the United States to compel the Secretary of State by mandamus to have a visa issued. This has occasionally been attempted. In *Friedman* v. *Kellogg,* 54 Wash. Law Reporter 846, a writ of mandamus of limited scope was granted by the Supreme Court of the District of Columbia in a somewhat similar matter. In other cases it has been refused. See *United States ex rel. Ulrich* v. *Kellogg,* 34 F. (2d), 984 (certiorari denied 279 U. S. 868), *supra; United States ex rel. Karolyi* v. *Kellogg,* Law No. 71040, in the Supreme Court of the District of Columbia. The latter case involved the issuance of a passport visa to an alien who was not an immigrant. The relator moved to make the respondent's answer more definite. The Government submitted substantially the argument which we have made above and urged that there was no occasion to consider the form of the pleadings when the ultimate purpose was to raise issues which the court would have to decline finally to pass upon. The court overruled the motion and the case proceeded no further.

If, as we contend, Congress did not intend to give the courts jurisdiction to review such decisions of Consuls in cases where the alien was abroad, it could hardly have contemplated such a review when immigrants come to our ports with-

out the requisite visas, as the relators have done in this case, i. e., by obtaining admission to Canada through subterfuge.

The best considered cases hold that a person seeking admission has no right to review the Consul's refusal to issue a visa.

In *United States ex rel. London* v. *Phelps,* 22 F. (2d) 288 (C. C. A. 2d), affirming 14 F. (2d) 679 (D. Vt.) (certiorari denied 276 U. S. 630), it was held that the refusal of the Consul to grant a passport visa to an alien who was not an immigrant was not reviewable by the courts. The court said (p. 290):

> It is urged that, even if a visé was lawfully imposed as a condition upon a non-immigrant's entry, the giving of a visé is a ministerial act, which the consul was bound to perform, and consequently the court should regard its omission as immaterial. With this we can not agree. Certainly the giving of a vise is not merely a ministerial act, because some inquiry on the spot, some determination of fact, is essential. It is admitted that the consul may withhold his visé if he believes the passport not to be genuine, or not in the hands of the rightful holder. The instructions of the Secretary of State which supplement the Executive Order, also require the consul to "satisfy himself of the temporary nature of the visit" of the alien. Whether the consul has acted reasonably or unreasonably is not for us to determine. Unjustifiable refusal to

> visé a passport may be ground for diplomatic complaint by the nation whose subject has been discriminated against. See 3 Moore's Digest, 996. It is beyond the jurisdiction of the court.

A petition for certiorari was denied. 276 U. S. 630. See also *United States ex rel. Graber* v. *Karnuth*, 30 F. (2d) 242 (C. C. A. 2d), certiorari denied, 279 U. S. 850; *United States ex rel. Komlos* v. *Trudell*, 35 F. (2d) 281 (C. C. A. 2d), certiorari denied, 280 U. S. 607.

IV

IT DOES NOT APPEAR THAT THE CONSUL AT ATHENS ACTED ARBITRARILY IN REFUSING TO ISSUE NON-QUOTA VISAS TO THE RELATORS

There are cases holding under peculiar circumstances that, if application has been made for a visa or similar certificate and it is clear that the Consul should have granted it, the court will regard as done that which ought to have been done and will consider the case as if the visa had been granted. *In re Spinella*, 3 F. (2d) 196 (S. D. N. Y.); *Ex parte Seid Soo Hong*, 23 F. (2d) 847 (N. D. Cal.).

It may well be that the courts may overlook mere defects in form. We have contended above that the courts have no power to review the deliberate conclusions of consular officers. But if they have any such power it must, we submit, be limited to cases in which it clearly appears that the Consul

acted arbitrarily on the case as it was presented to him.

Here no such situation is shown. Neither the District Court nor the Circuit Court of Appeals found that the Consul did act arbitrarily. The District Court seems to have granted the writ upon the authority of *Johnson* v. *Keating,* 17 F. (2d) 50, holding that no visa is required. The Circuit Court of Appeals held that a visa was required in this case. Although there are some statements by that court as to the facts[3] in regard to the attempts to obtain visas, the court does not discuss the propriety of the action of the Consul, and nothing in the opinion of either court precludes us from examining the evidence as to the situation with which the Consul was faced.

The testimony in regard to this matter given by the daughter before the Board was as follows (R. 16–18, 24, 46, 54):

> Q. When did you first go to the American Consulate at Athens and apply for papers on which to return to the U. S.?
>
> A. I didn't go personally to the American Consulate but I wrote him a letter in 1924.
>
> Q. What month?

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[3] The following statements of facts made by the Circuit Court of Appeals (R. 80) are somewhat inaccurate, as the testimony hereinafter quoted demonstrates: "There was some delay in settling his estate and when the relators were ready to return to this country application was made to the consul by letter some time in 1924 for return permits. They were refused. In 1925, another such application was made and denied."

A. January.

Q. What did you say in that letter?

A. I asked him if I could renew my papers—I had papers made in New York when I came to Greece, and I asked him if I could renew them and he wrote me back and said if I gave full explanation what was the reason, I could stay for another six months' time.[4]

* * * * *

Q. When you received the letter from the American Consulate telling you that for a good reason you might get an extension of time, what did you do next as to getting the extension?

A. Next I did write to him explaining the situation.

Q. When?

A. After my father died of course—I can't remember the month—in 1924, it was, explaining how the circumstances were, that

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[4] This letter of January 10, 1924, is in evidence as Exhibit B. (R. 59.) It reads as follows:

AMERICAN CONSULAR SERVICE,
CONSULATE GENERAL,
Athens, January 10th, 1924.

ANTIGONE POLYMERIS, *Volo, Greece.*

MADAM: In reply to your letter of Jan. 3rd, I have to inform you that your papers can not be renewed for a stay longer than six months time unless you can furnish very good reasons for your longer delay. If you are ill, it will be necessary to send a doctor's certificate to this office, and if you are delayed on account of personal business you will have to explain in detail all the circumstances which make it necessary for you to request an extension of time.

I am, Madam,
Yours very respectfully,

W. L. LOWRIE,
American Consul General.

I had to stay with the property, etc., and he wrote back an answer that I would have to come in person to Athens—to him personally—and arrange it later on.

Q. Did you reply to that letter?

A. No, I didn't.

Q. When did you go to Athens to arrange it?

A. In 1925 I wrote him another letter asking him if I could get a nonquota permit, and he refused me.

Q. Did he tell you why?

A. Well I don't remember, but I think it was because I stayed too long, you see.

Q. Since you were refused by the American Consul in 1925, have you made any further effort to get papers on which to return to the U. S.?

A. Yes, I did when we moved to Athens in 1926 and I put the matter in some lawyer's hands, J. Tsatsonis, to take care of my case, but he couldn't succeed so he told me to put the matter to my brothers and take care of it in the United States.

Q. Have you personally ever applied at the American Consulate for papers?

A. Not until lately, but my brothers got in touch with Mr. Van Riper and he prepared me some papers and I went to the Consulate personally with my mother.

Q. When did you go to the American Consulate?

A. That was around January 1929.

Q. Where?

A. In Athens.

Q. What did the Consul tell you?

A. He refused me.

Q. Why?

A. He couldn't grant me a nonquota permit.

Q. Did he say why he couldn't?

A. Because I stayed too long.

* * * * *

Q. Did you or your mother ever seek an extension of time on account of illness?

A. Never.

Q. Did you ever furnish the American Consul with a detailed explanation of the personal business which detained you?

A. Yes.

Q. When did you furnish that?

A. It was later—after my father died; maybe two months—I don't remember the date.

Q. Why didn't you go to see the Consul when he told you to come, instead of writing?

A. It was very far.

Q. How many miles?

A. Volo to Athens—I don't know the miles; I can tell how long it takes to go. You leave at night and you get there the next night at six.

* * * * *

Q. Didn't you change your mind after your father died?

A. In 1926 I hired a lawyer to handle the case in Athens and he couldn't succeed.

Q. What was the name of the lawyer?

A. Mr. J. Tsatsones.

Q. What did this lawyer do?

A. He couldn't succeed.

Q. He couldn't succeed in what?

A. In getting me a quota visa.

Q. And also your mother?

A. O, yes, every time.

Q. When did you first hire a lawyer in New York?

A. In 1926.

Q. Did you go to the American Consulate in person after he wrote you in January, 1924?

A. I only went in person when Mr. Van Riper sent me those papers.

Q. What papers?

A. I left some papers with you the other day.

* * * * *

Q. Do you recollect my reading you an excerpt from a letter marked "Exhibit C" in which he stated that there is no record at the Consulate General's in Athens, Greece, from the time of the letter of January 10, 1924, marked "Exhibit B," to March 13, 1929, when you appeared at the Consulate?

A. That isn't true because in 1924, besides the one I referred to, I wrote another letter—I don't remember the month, but after my father died in 1925 I wrote again and in 1926.

Q. Did you go at any time to the Consulate before March 13, 1929?

A. No.

Q. You were living in Athens, why didn't you go?

A. Because I didn't think it was any use.

Q. The Consul states in his letter of January 10th, marked "Exhibit B," that you

should present the reasons for wanting an extension?

A. I did explain.

Q. You didn't appear personally, although you were there a matter of three or four years?

A. You see I told you I had been in Athens but you see all the time, but in 1925 they refused me and I didn't think he would grant me a visa if I went personally, as he refused me in his last letter.

Q. Where is this letter of 1925?

A. I haven't got it.

The mother, Aspasia, testified, in effect, that until about two years ago she left the entire matter to her daughter and evidently the mother did not see the Consul or communicate with him until that time. (See R. 50.)

Even if we accept as true all of the testimony of Antigone, it appears that she did not comply with the requirements of the law or the request of the Consul. She says that when she wrote to the consul after her father's death he wrote, in 1924, that she would have to come in person to Athens to arrange the matter; that she made no reply to that letter, and that, although she wrote again in 1925, she did not appear at the Consulate until 1929.[5]

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[5] Nothing in the record indicates that she ever made or attempted to make the written application for a visa which section 7(a) prescribes or that she furnished the Consul with information which section 7(b) requires, ~~but which the Consul may waive~~. (See pp. 34, 42, *infra*.)

In this situation, it was not improper for the Consul to decline to grant her a visa. The Act of 1924 and the regulations evidently contemplate that temporary visits ordinarily last less than a year, and that extensions will be given for but six months at a time and then only upon a sufficient showing. (See Section 10 (b) and (c), p. 36, *infra,* and regulations[6] printed on pp. 40–42, *infra.*) It would seem reasonable for the Consul to require a personal interview with the applicant asking for an extension in order to cross-examine her, ascertain the exact situation, and form some idea as to her good faith. The relators here, according to their own testimony, entirely disregarded this request of the Consul. Even if, as the daughter testified, she did write again in 1925 requesting a nonquota visa, that was hardly enough to require

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[6] The Act of May 19, 1921, as amended (42 Stat. 5), in Section 2(d), provided "that aliens returning from a temporary visit abroad * * * may, if otherwise admissible, be admitted notwithstanding * * * " the quota provisions as to other aliens of the same nationality. The Secretary of Labor prescribed the following regulation as to what constituted "a temporary visit abroad": "An alien who remains abroad in excess of six months shall be presumed to have abandoned his domicile in the United States. However, such presumption may be overcome by the production of evidence to the contrary, satisfactory to the appropriate immigration officers." (Paragraph A, page 97, Regulations of May 1, 1917, 7th Ed., August, 1922.)

This regulation was sustained in the following cases: *United States ex rel. Randozzo* v. *Tod*, 297 Fed. 214 (C. C. A. 2d); *Lidonnici* v. *Davis*, 16 F. (2d) 532 (App. D. C.), certiorari denied, 274 U. S. 744.

the Consul to issue it. It is true that a determined effort was made to get the Consul to issue a visa in 1929. (See R. 60–68.) But it does not appear that even then the whole situation as presented was so clear as to compel any reasonable man in his position to reach a conclusion contrary to his determination that the applicants were not nonquota immigrants. The mere fact that the applicants at a later date in this country may have established that fact is beside the point. The Consul, of course, did not appear as a witness before the Board of Special Inquiry. There was no review of the record before him. Exclusion was properly based upon the lack of required papers.

CONCLUSION

We respectfully submit that the judgment below should be affirmed.

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DECEMBER, 1931.

APPENDIX

STATUTES AND REGULATIONS INVOLVED

STATUTES

The Immigration Act of May 26, 1924, c. 190, 43 Stat. 153, 154–159, 161, 162, 165, 166, 169, provides as follows:

> SEC. 2. (a) A consular officer upon the application of any immigrant (as defined in section 3) may (under the conditions hereinafter prescribed and subject to the limitations prescribed in this Act or regulations made thereunder as to the number of immigration visas which may be issued by such officer) issue to such immigrant an immigration visa which shall consist of one copy of the application provided for in section 7, visaed by such consular officer. Such visa shall specify (1) the nationality of the immigrant; (2) whether he is a quota immigrant (as defined in section 5) or a nonquota immigrant (as defined in section 4); (3) the date on which the validity of the immigration visa shall expire; and (4) such additional information necessary to the proper enforcement of the immigration laws and the naturalization laws as may be by regulations prescribed.
>
> * * * * *
>
> (f) No immigration visa shall be issued to an immigrant if it appears to the consular officer, from statements in the application, or in the papers submitted therewith, that the immigrant is inadmissible to the United States under the immigration laws, nor shall such immigration visa be issued if the appli-

cation fails to comply with the provisions of this Act, nor shall such immigration visa be issued if the consular officer knows or has reason to believe that the immigrant is inadmissible to the United States under the immigration laws. (U. S. C., Title 8, Sec. 202.)

* * * * *

SEC. 3. When used in this Act the term "immigrant" means any alien departing from any place outside the United States destined for the United States, except (1) a government official, his family, attendants, servants, and employees, (2) an alien visiting the United States temporarily as a tourist or temporarily for business or pleasure, (3) an alien in continuous transit through the United States, (4) an alien lawfully admitted to the United States who later goes in transit from one part of the United States to another through foreign contiguous territory, (5) a bona fide alien seaman serving as such on a vessel arriving at a port of the United States and seeking to enter temporarily the United States solely in the pursuit of his calling as a seaman, and (6) an alien entitled to enter the United States solely to carry on trade under and in pursuance of the provisions of a present existing treaty of commerce and navigation. (U. S. C., Title 8, Sec. 203.)

SEC. 4. When used in this Act the term "nonquota immigrant" means—

* * * * *

(b) An immigrant previously lawfully admitted to the United States, who is return-

ing from a temporary visit abroad; * * *. (U. S. C., Title 8, Sec. 204.)

* * * * *

SEC. 7. (a) Every immigrant applying for an immigration visa shall make application therefor in duplicate in such form as shall be by regulations prescribed.

(b) In the application the immigrant shall state (1) the immigrant's full and true name; age, sex, and race; the date and place of birth; places of residence for the five years immediately preceding his application; whether married or single, and the names and places of residence of wife or husband and minor children, if any; calling or occupation; personal description (including height, complexion, color of hair and eyes, and marks of identification); ability to speak, read, and write; names and addresses of parents, and if neither parent living, then the name and address of his nearest relative in the country from which he comes; port of entry into the United States; final destination, if any, beyond the port of entry; whether he has a ticket through to such final destination; whether going to join a relative or friend, and if so, what relative or friend and his name and complete address; the purpose for which he is going to the United States; the length of time he intends to remain in the United States; whether or not he intends to abide in the United States permanently; whether ever in prison or almshouse; whether he or either of his parents has ever been in an institution or hospital for the care and treatment of the insane; (2) if he claims to be a nonquota immigrant, the facts on which he bases such claim; and (3) such additional information necessary to the proper enforcement of the immigra-

tion laws, and the naturalization laws, as may be by regulations prescribed.

* * * * *

(f) Each copy of the application shall be signed by the immigrant in the presence of the consular officer and verified by the oath of the immigrant administered by the consular officer. One copy of the application, when visaed by the consular officer, shall become the immigration visa, and the other copy shall be disposed of as may be by regulations prescribed.

* * * * *

(h) A fee of $1 shall be charged for the furnishing and verification of each application, which shall include the furnishing and verification of the duplicate, and shall be covered into the Treasury as miscellaneous receipts. (U. S. C., Title 8, Sec. 207.)

SEC. 8. A consular officer may, subject to the limitations provided in sections 2 and 9, issue an immigration visa to a nonquota immigrant as such upon satisfactory proof, under regulations prescribed under this Act, that the applicant is entitled to be regarded as a nonquota immigrant. (U. S. C., Title 8, Sec. 208.)

* * * * *

SEC. 10. (a) Any alien about to depart temporarily from the United States may make application to the Commissioner General for a permit to reenter the United States, stating the length of his intended absence, and the reasons therefor. Such application shall be made under oath, and shall be in such form and contain such information as may be by regulations prescribed, and shall be accompanied by two copies of the applicant's photograph.

(b) If the Commissioner General finds that the alien has been legally admitted to the United States, and that the application is made in good faith, he shall, with the approval of the Secretary of Labor, issue the permit, specifying therein the length of time, not exceeding one year, during which it shall be valid. The permit shall be in such form as shall be by regulations prescribed and shall have permanently attached thereto the photograph of the alien to whom issued, together with such other matter as may be deemed necessary for the complete identification of the alien.

(c) On good cause shown the validity of the permit may be extended for such period or periods, not exceeding six months each, and under such conditions, as shall be by regulations prescribed.

(d) For the issuance of the permit, and for each extension thereof, there shall be paid a fee of $3, which shall be covered into the Treasury as miscellaneous receipts.

* * * * *

(f) A permit issued under this section shall have no effect under the immigration laws, except to show that the alien to whom it is issued is returning from a temporary visit abroad; but nothing in this section shall be construed as making such permit the exclusive means of establishing that the alien is so returning. (U. S. C., Title 8, Sec. 210.)

* * * * *

SEC. 13. (a) No immigrant shall be admitted to the United States unless he (1) has an unexpired immigration visa or was born subsequent to the issuance of the im-

migration visa of the accompanying parent, (2) is of the nationality specified in the visa in the immigration visa, (3) is a non-quota immigrant if specified in the visa in the immigration visa as such, and (4) is otherwise admissible under the immigration laws.

(b) In such classes of cases and under such conditions as may be by regulations prescribed immigrants who have been legally admitted to the United States and who depart therefrom temporarily may be admitted to the United States without being required to obtain an immigration visa. (U. S. C., Title 8, Sec. 213.)

* * * * *

SEC. 23. Whenever any alien attempts to enter the United States the burden of proof shall be upon such alien to establish that he is not subject to exclusion under any provision of the immigration laws; * * *. (U. S. C., Title 8, Sec. 221.)

SEC. 24. The Commissioner General, with the approval of the Secretary of Labor, shall prescribe rules and regulations for the enforcement of the provisions of this Act; but all such rules and regulations, in so far as they relate to the administration of this Act by consular officers, shall be prescribed by the Secretary of State on the recommendation of the Secretary of Labor. (U. S. C. Title 8, Sec. 222.)

SEC. 25. The provisions of this Act are in addition to and not in substitution for the provisions of the immigration laws, and shall be enforced as a part of such laws, and all the penal or other provisions of such laws, not inapplicable, shall apply to and be enforced in connection with the provisions of this Act. An alien, although admissible

under the provisions of this Act, shall not be admitted to the United States if he is excluded by any provision of the immigration laws other than this Act, and an alien, although admissible under the provisions of the immigration laws other than this Act, shall not be admitted to the United States if he is excluded by any provision of this Act. (U. S. C., Title 8, Sec. 223.)

SEC. 31. (a) Sections 2, 8, 13, 14, 15, and 16, and subdivision (f) of section 11, shall take effect on July 1, 1924, except that immigration visas and permits may be issued prior to that date, which shall not be valid for admission to the United States before July 1, 1924. * * *

(b) The remainder of this Act shall take effect upon its enactment.

(c) If any alien arrives in the United States before July 1, 1924, his right to admission shall be determined without regard to the provisions of this Act, except section 23.

REGULATIONS

Rule 3, Subdivision F, paragraph 1 (Immigration Laws and Rules, January 1, 1930, p. 122) reads as follows:

No immigrant, whether a quota immigrant or nonquota immigrant, of any nationality shall be admitted to the United States unless such immigrant shall present to the proper immigration official, at the port of arrival, an immigration visa duly issued and authenticated by an American consular officer: *Provided,* That (a) aliens who have been previously lawfully admitted to the United States and who are returning from a temporary visit of not more than six months to Canada, Newfoundland, St.

Pierre, Miquelon, Bermuda, Mexico, Cuba, and other islands included in the Bahama and Greater Antilles groups, or such aliens who are returning from a temporary visit to any other foreign country and who are in possession of a permit to reenter the United States issued in accordance with the provisions of section 10 of the immigration act of 1924, and (b) children born subsequent to the issuance of an immigration visa to the accompanying parent, if otherwise admissible, shall be permitted to enter the United States without an immigration visa.

Rule 3, Subdivision I, paragraph 2 (Immigration Laws and Rules, January 1, 1930, p. 126), reads as follows:

An alien claiming to be a nonquota immigrant on the ground that he has been previously lawfully admitted to the United States and is returning from a temporary visit abroad shall not be admitted as such unless at time of arrival he shall establish that he has been previously lawfully admitted to the United States and is returning from a temporary visit abroad, and presents an unexpired valid immigration visa duly issued by an American consular officer designating the holder as such: *Provided,* That the presentation of an unexpired valid permit to reenter, duly issued to the holder thereof pursuant to the provisions of section 10 of the immigration act of 1924, shall be deemed to show prima facie that such holder is returning from a temporary visit abroad, and shall be accepted also in lieu of immigration visa: *And further provided,* That any alien who establishes that he has been previously lawfully admitted to the United

States and is returning from a temporary visit of not more than six months to Canada, Newfoundland, St. Pierre, Miquelon, Bermuda, Mexico, Cuba, and other islands included in the Bahama and Greater Antilles groups shall be permitted to enter the United States without a passport, an immigration visa, or permit to reenter.

Extract from No. 926, General Instruction Consular, Diplomatic Serial No. 273, issued by the Department of State September 30, 1925, in accordance with Section 24 of the Immigration Act of May 26, 1924:

117. In the absence of such a permit and in the event that the alien claims that he is only temporarily absent from the United States, the consul shall require the alien applicant to verify his statements by such means as may be found practicable, and if he is satisfied that the statements of the alien are true and made in good faith, he may classify the applicant as a nonquota immigrant and issue an immigration visa to him as such

118. Authorization from the Secretary of State is not required by the consul as a basis for granting an immigration visa to a nonquota returning alien.

119. Even in the case of a visit abroad of six months or less, inquiry should be made into the legality of the original entry of the alien. Previous admission, however regular, as a nonimmigrant or as a student under section 4(e) is not considered as "previous lawful admittance" for the purposes of section 4(b) of the act.

120. After an absence the burden of proof is on the returning alien to show—

(*a*) That he was previously lawfully admitted to the United States;

(*b*) That he went abroad with the intention of returning to reside in the United States;

(*c*) That he has an established domicile in the United States; and

(*d*) That his stay abroad, if protracted, was caused by justifiable reasons over which the alien had little or no control.

121. The longer the interval of time that an alien has remained abroad on a temporary visit the more exacting is the inquiry into the four points outlined in paragraph 120. Practically every case of an alien returning from abroad from a protracted visit is made the subject of an investigation by the Board of Special Inquiry at the port of entry and many are referred on appeal to the Secretary of Labor. It may be said in general terms that after a visit abroad of a year or more the policy of that department is to deny nonquota status unless conclusive evidence on all four points is submitted by the alien.

122. Consuls should be guided by the policy outlined, and in any case in which a visa is granted and in which there is any element of doubt in the consul's mind the applicant should be informed of the policy of the Department of Labor and warned that any statements made or evidence presented at the consulate not borne out by the investigations at the port of entry will probably result in his exclusion from the United States.

123. In cases of aliens who come within the purview of section 4(b) and apply for nonquota immigration visas for use in reentering the United States, consuls may waive the documents referred to in section 7(c) of the act. However, in cases of aliens applying for nonquota immigration visas upon the ground of previous lawful admis-

sion to the United States and return from a temporary visit abroad, if consuls have reason to doubt their good faith or right to be readmitted to the United States under the law they may, if they deem it desirable, require any or all of the documents mentioned in section 7(c) if they are available; that is, if it is possible to procure them from the appropriate authorities.

In the edition issued on March 23, 1929, Section 122 was canceled, but the other sections remain unchanged.

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